

CSKT Off-Reservation Water Rights

- Summary of State of Montana Proposal: submitted in two parts – July 20, 2011 and January 30, 2012
- Summary of CSKT response to State of Montana Proposal
<http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/Default.asp>
- Next steps in process

Elements of State Proposal

1. Instream Flow Water Right (Enforceable Hydrograph) on the Swan River and the Kootenai River
 - Water right based on a natural, dry year hydrograph with a fisheries purpose
 - Water right held by the CSKT with a time immemorial priority date

2. Co – Ownership of Water Rights currently held by the Montana Fish, Wildlife and Parks
 - Public Recreation or Murphy [Instream] rights on the mainstem of the Bitterroot River, the Blackfoot River, the Flathead River and mainstem forks, Rock Creek in the Clark Fork, and filed use rights on the Tobacco River and Young Creek in the Kootenai Drainage
 - Public Recreation Water Rights on lakes in the Clearwater and Blackfoot Drainages and upper Little Bitterroot Basin

Elements of State Proposal *continued*

3. Co-Ownership with MFWP of current Contract Water held in storage in Painted Rocks Reservoir and Lake Como in the Bitterroot Valley
 - Three separate contracts – 2 for Painted Rocks totaling 15,000 acre-feet of water, and 1 for Como totaling 3,000 acre-feet of water
 - Water is retained in reservoirs and released for fisheries support in the summer / early fall months

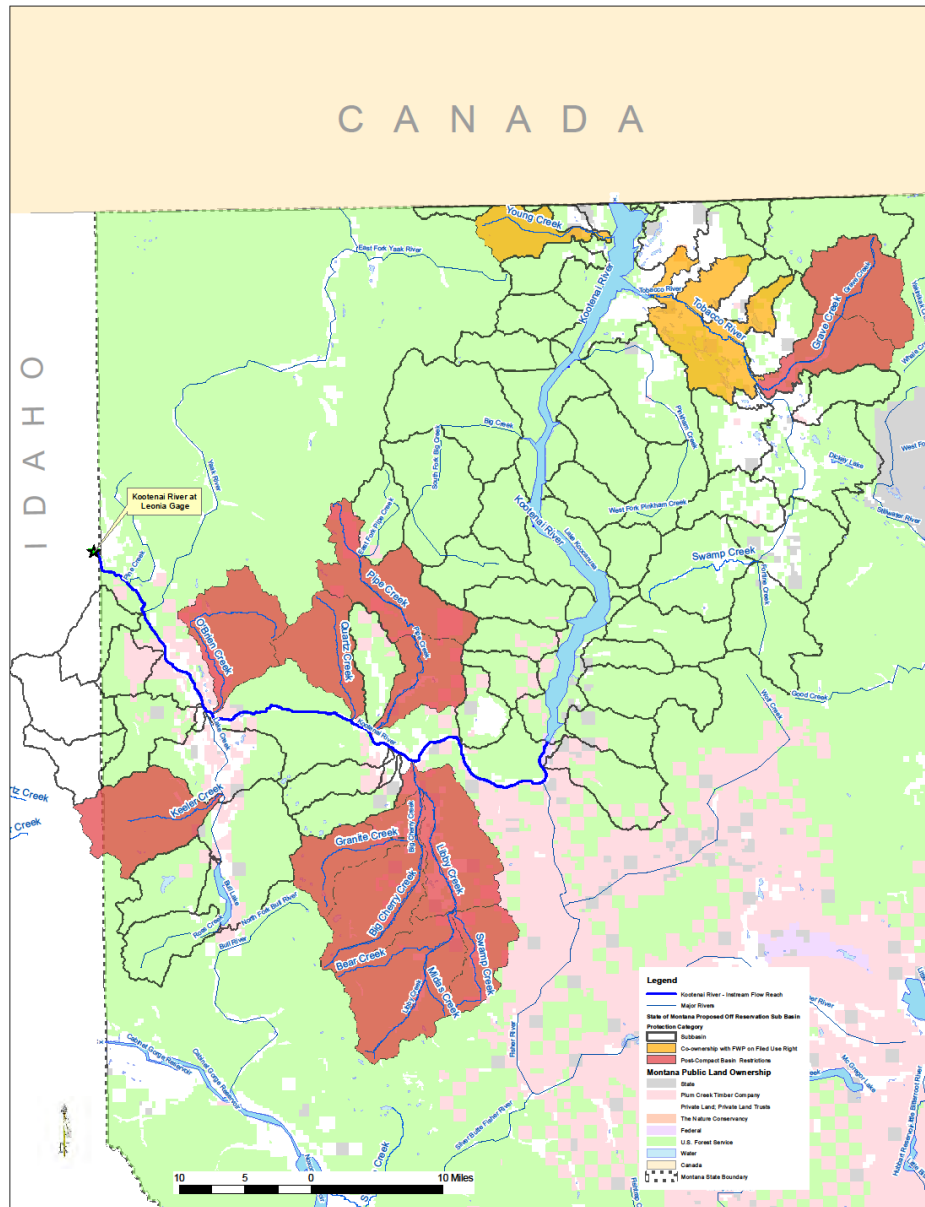
4. Co – Ownership with MFWP of the non-consumptive water right at the Milltown Dam site
 - Water right would have fishery purpose and 1904 priority date
 - Water right would be held jointly by MFWP and CSKT

Elements of State Proposal *continued*

5. Basin Restrictions in selected tributaries in the Kootenai and Swan Valleys

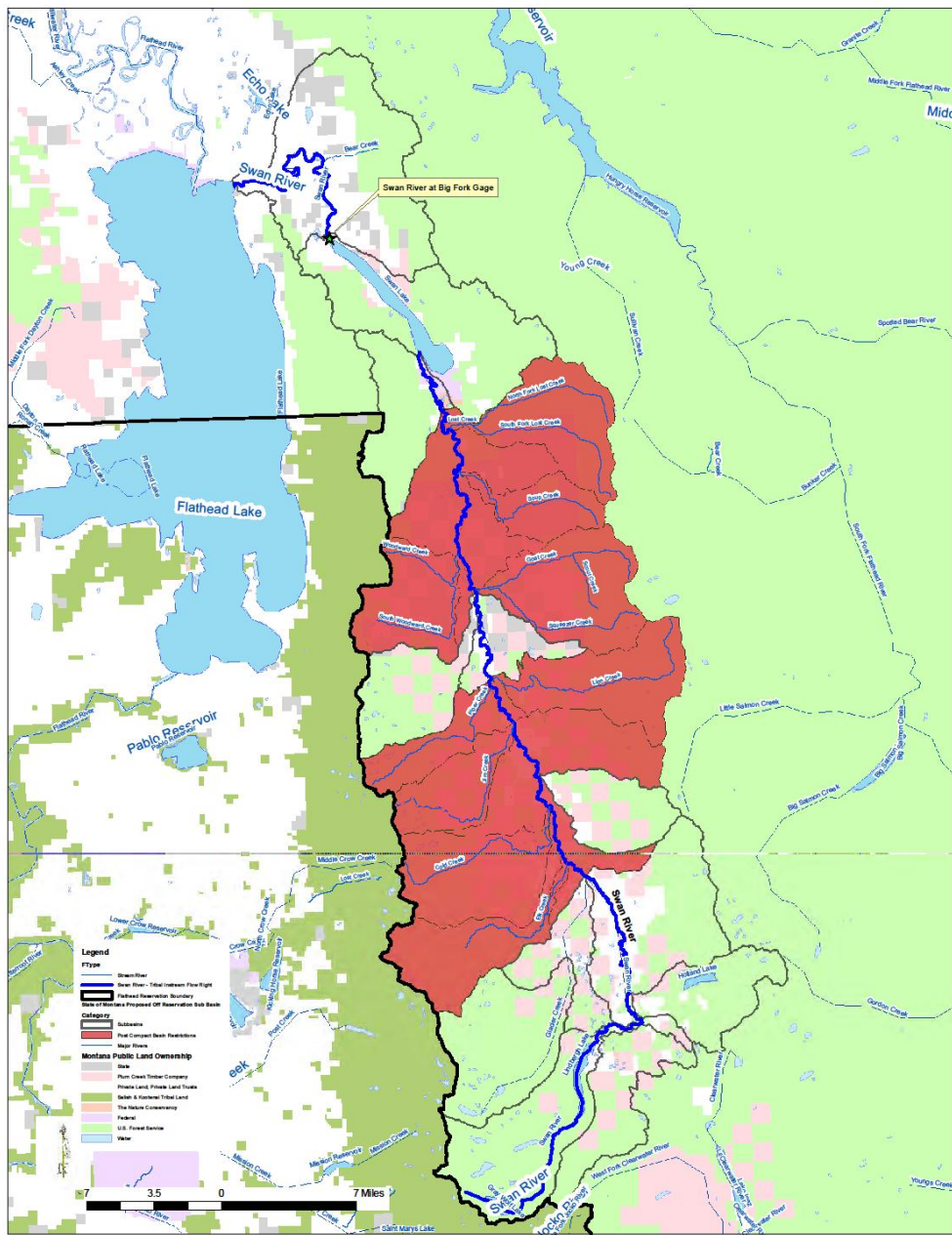
- Basin Restrictions are located in tributaries that are defined as critical bull trout habitat – not all tributaries in the Kootenai or Swan valleys included
- The State, through DNRC administration, would place a cap on future development of water in named tributaries. No water right would be assigned to the Tribes
- In two basins in the Kootenai Drainage – Graves Creek and O'Brien Creek, the State would close the basins to future appropriations

Kootenai River Basin 2



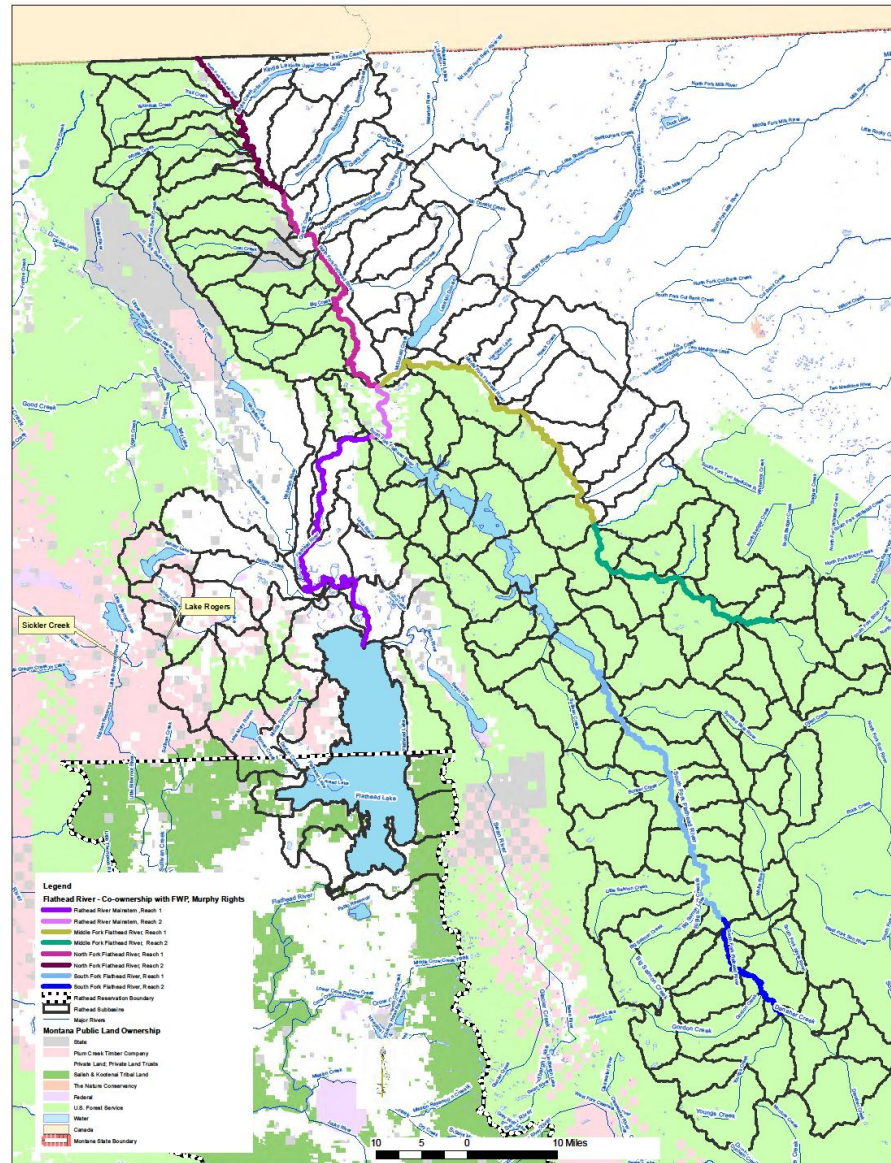
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Swan River Basin 2



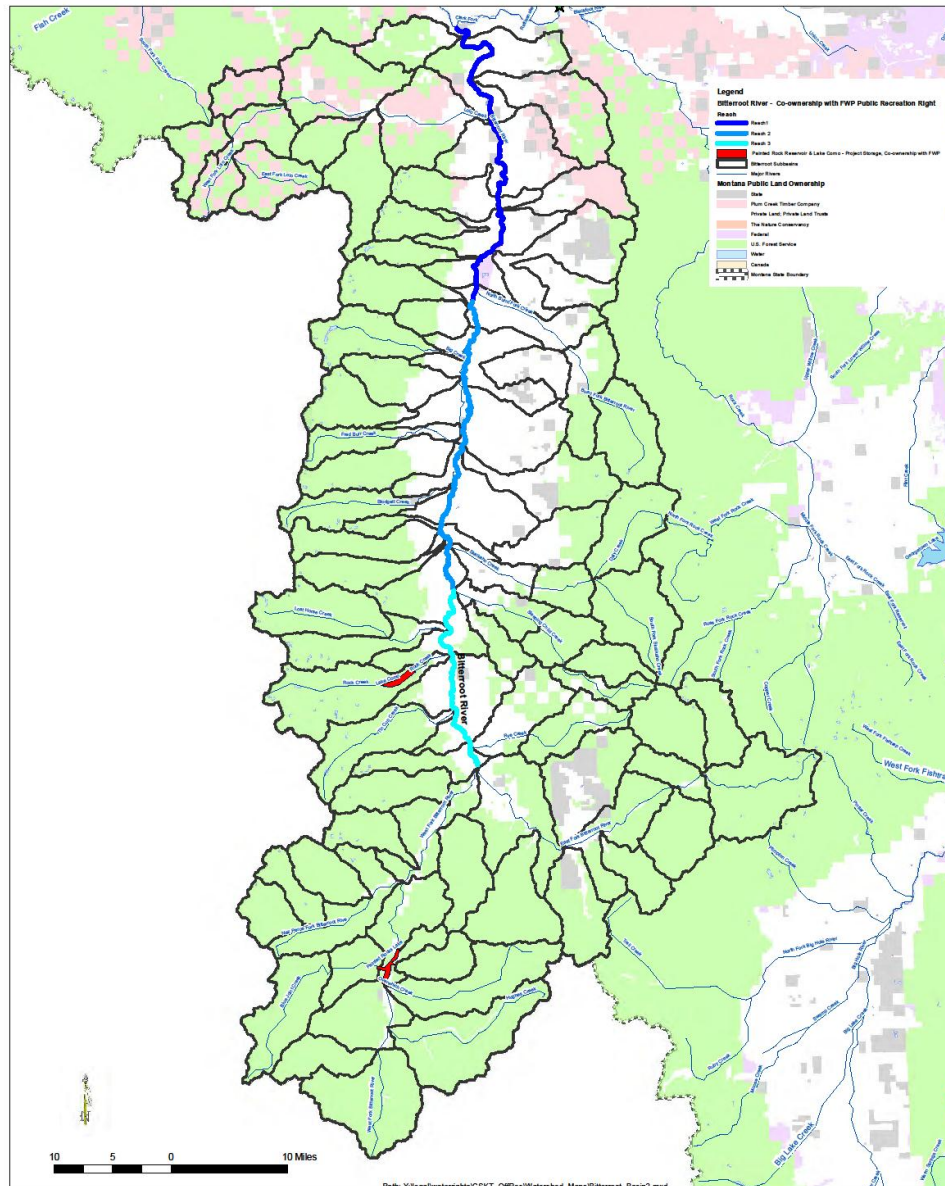
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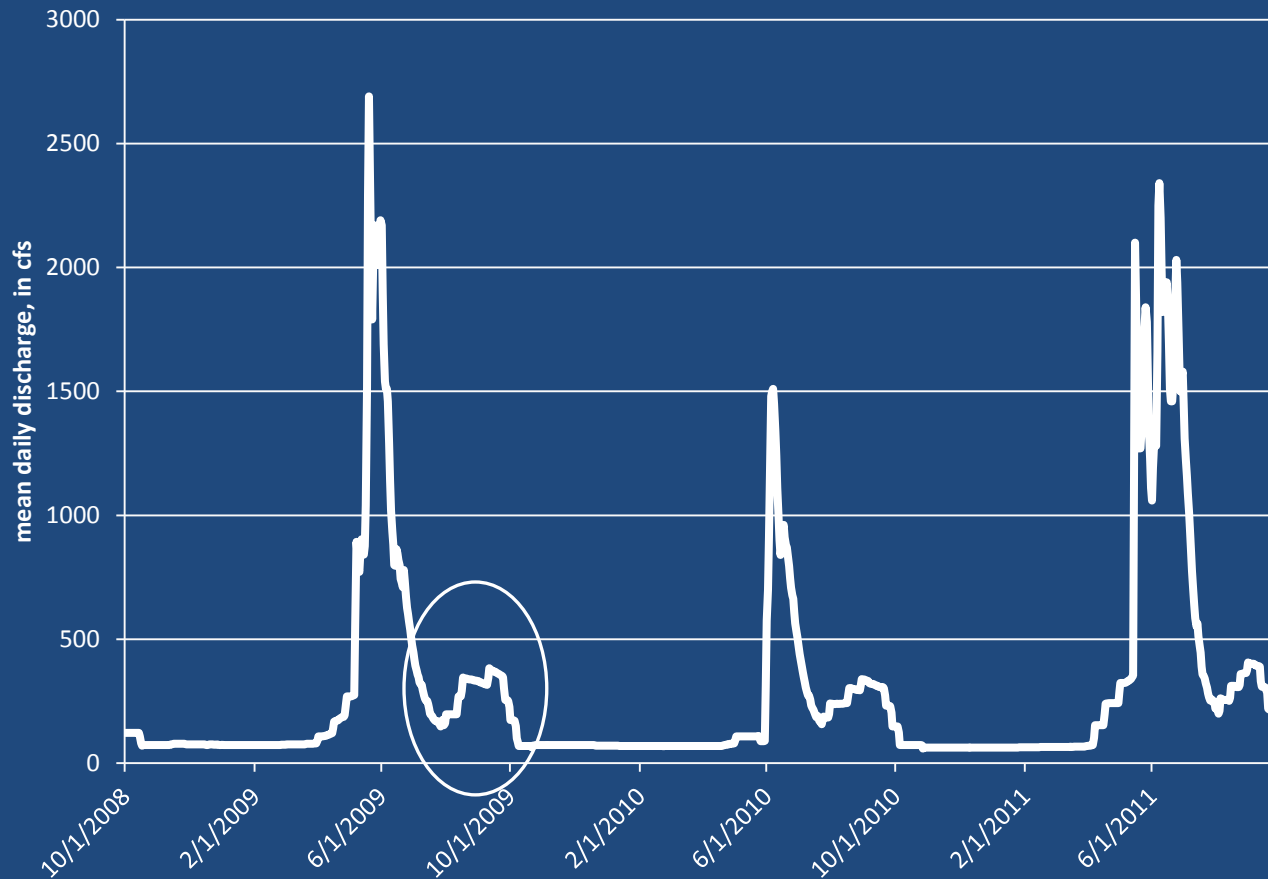
Flathead River Basin 2



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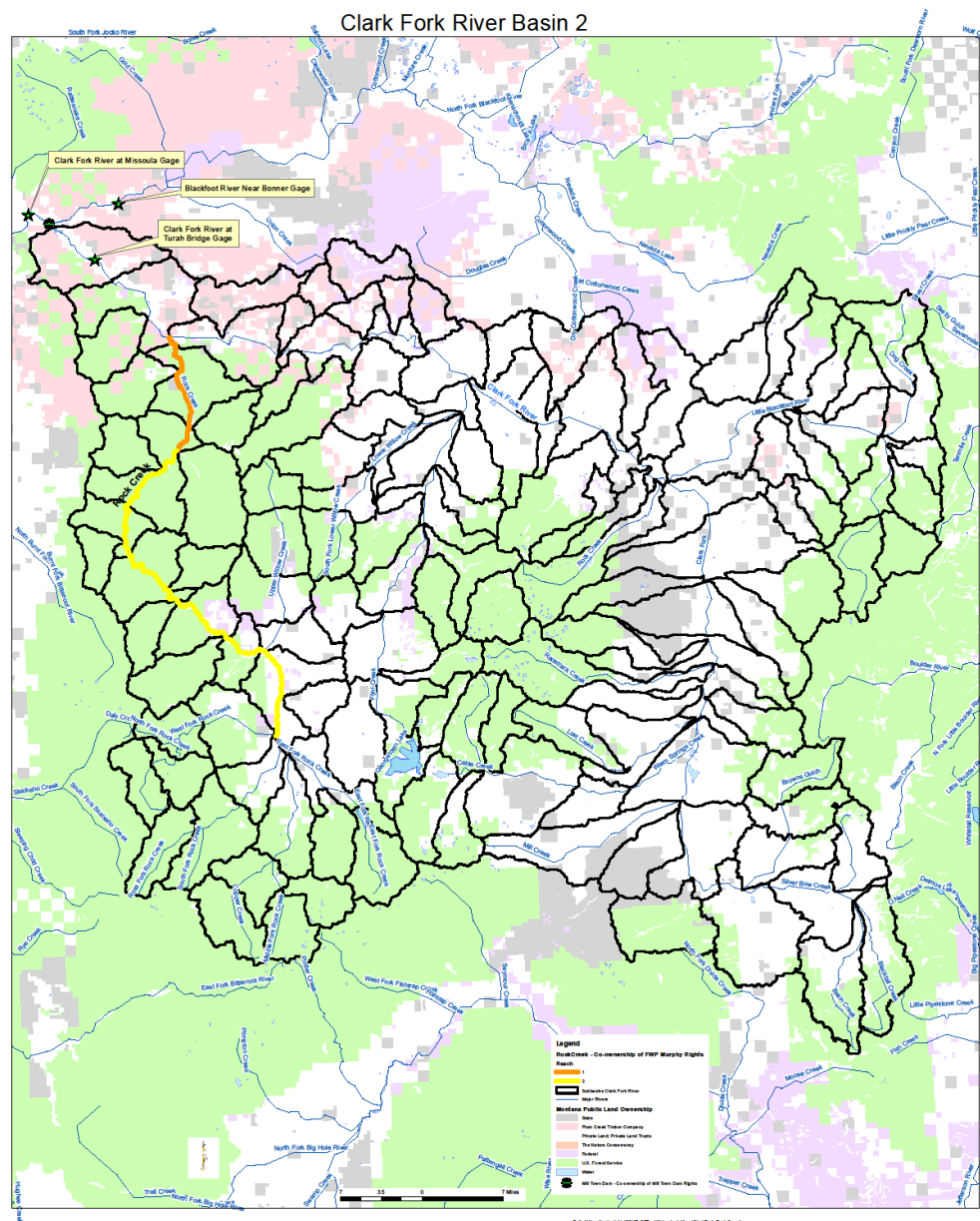
Bitterroot River Basin 2

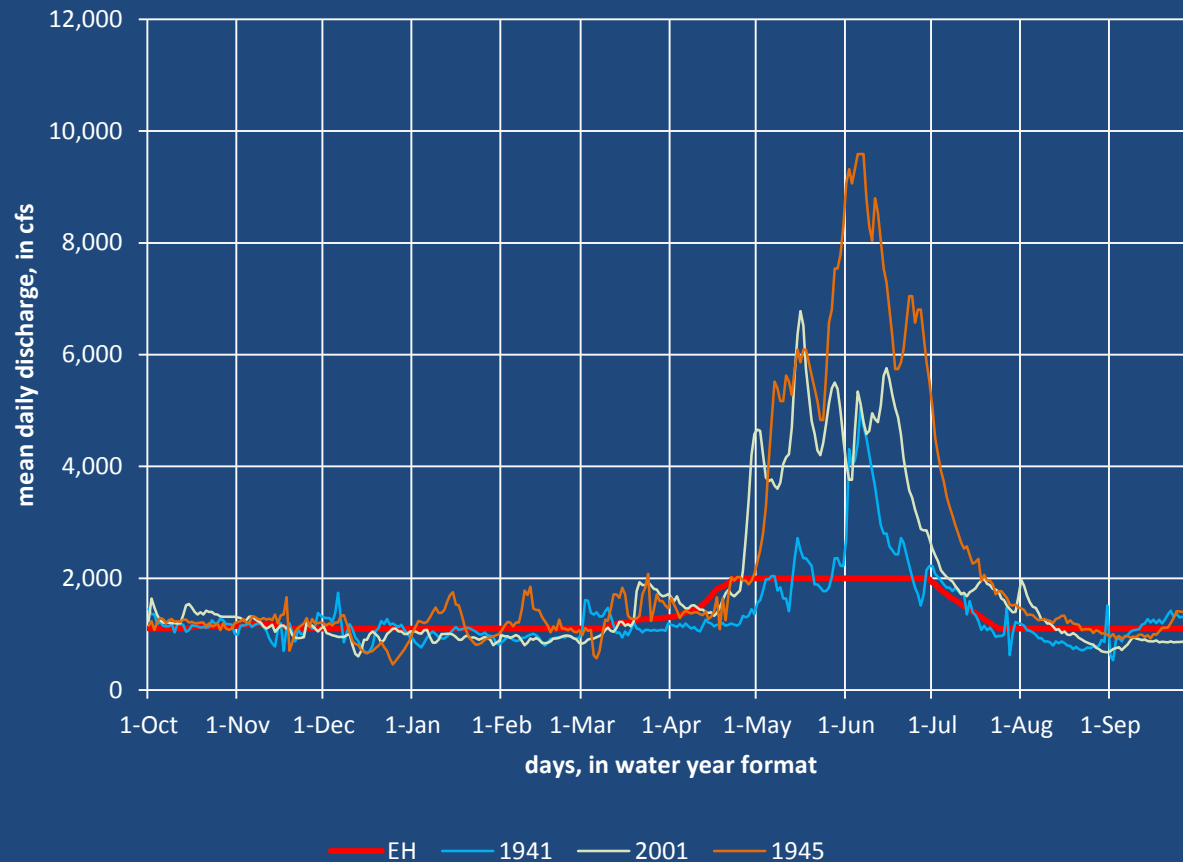




West Fork Bitterroot River near Conner; gage located below Painted Rocks Reservoir. Hydrograph shows the summer release pattern, which includes contract water releases for irrigation and instream flow uses.

Clark Fork River Basin 2

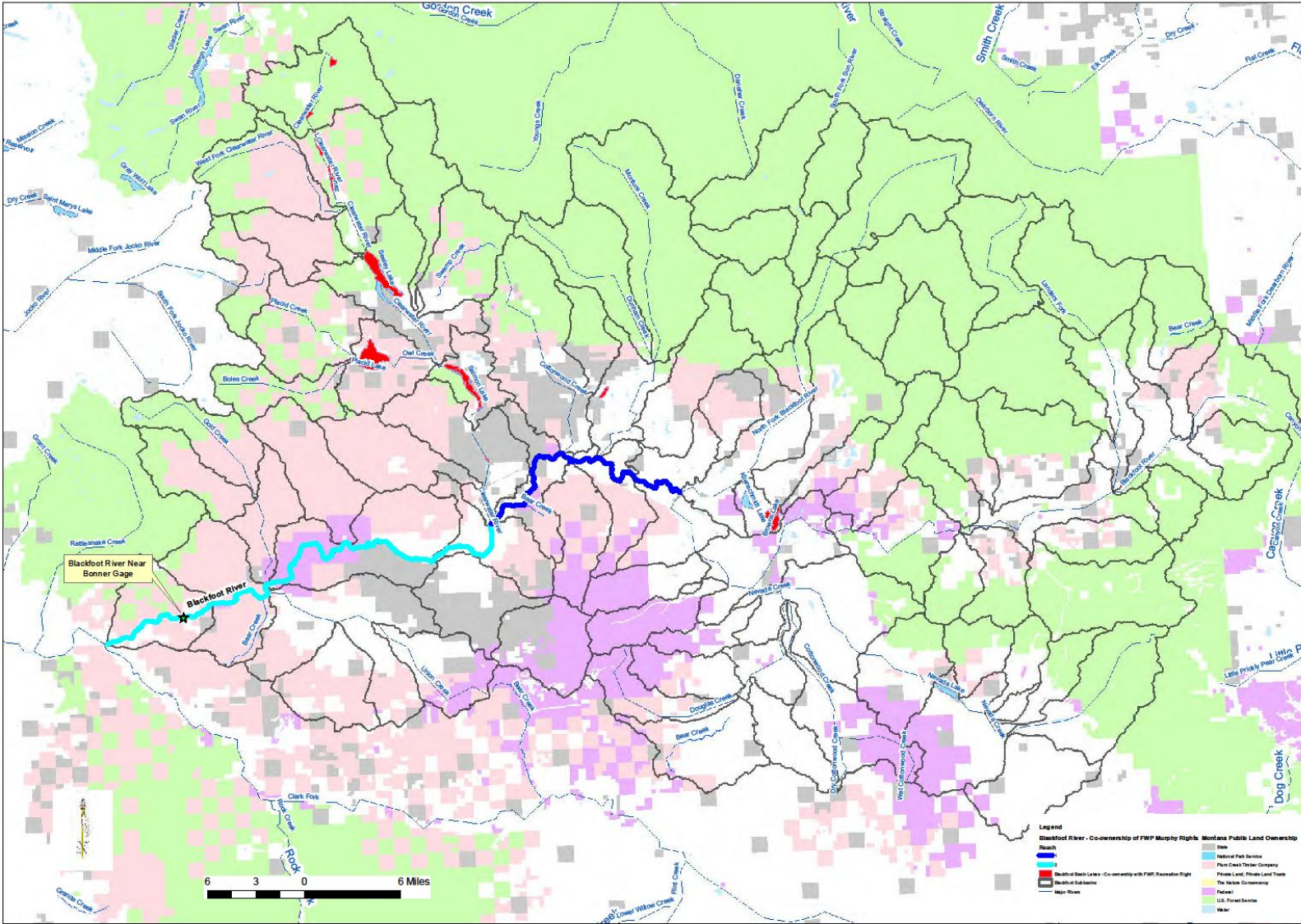




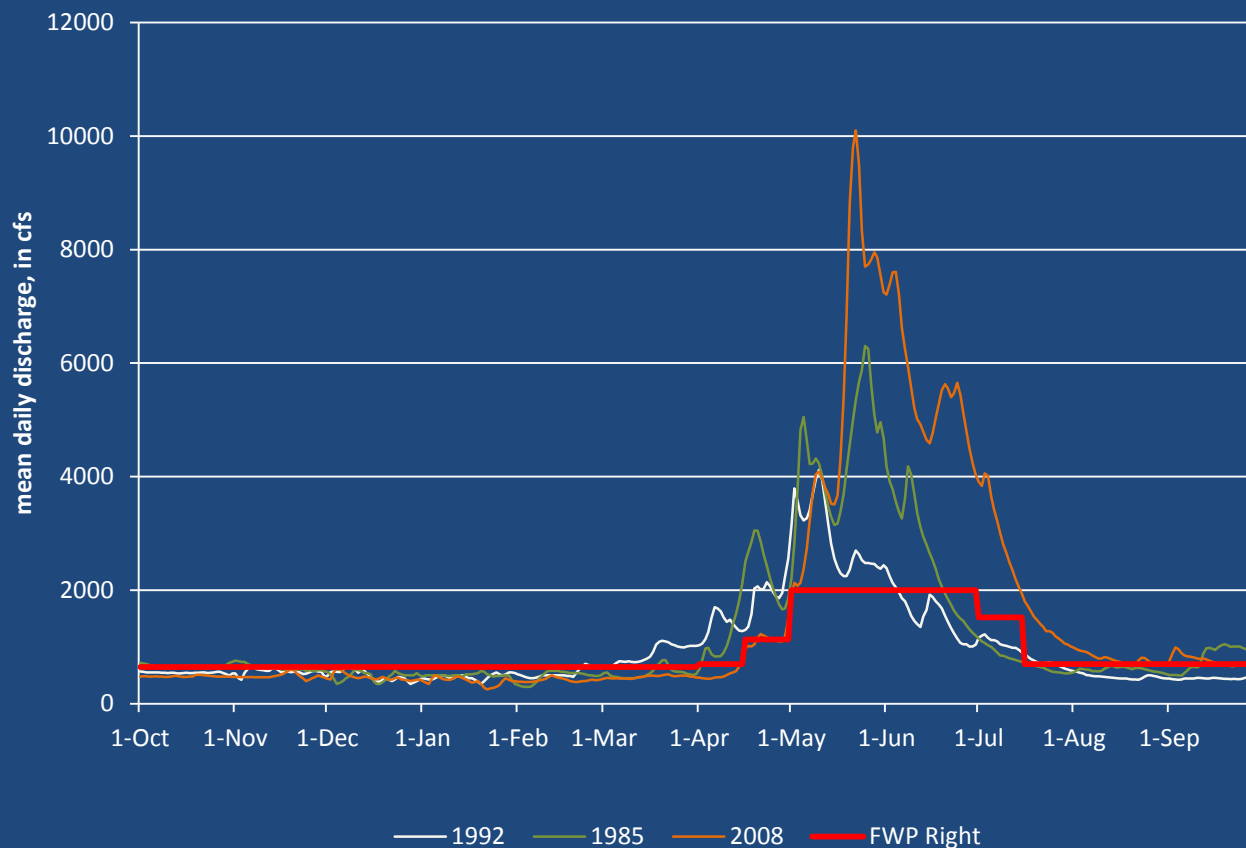
Clark Fork River above Missoula gage.

EH is State proposed enforceable hydrograph; 1941 is driest year in period; 2001 is 10th percentile year in period; 1945 is 20th percentile year in period. Period 1930 – 2011.

Blackfoot River Basin 2

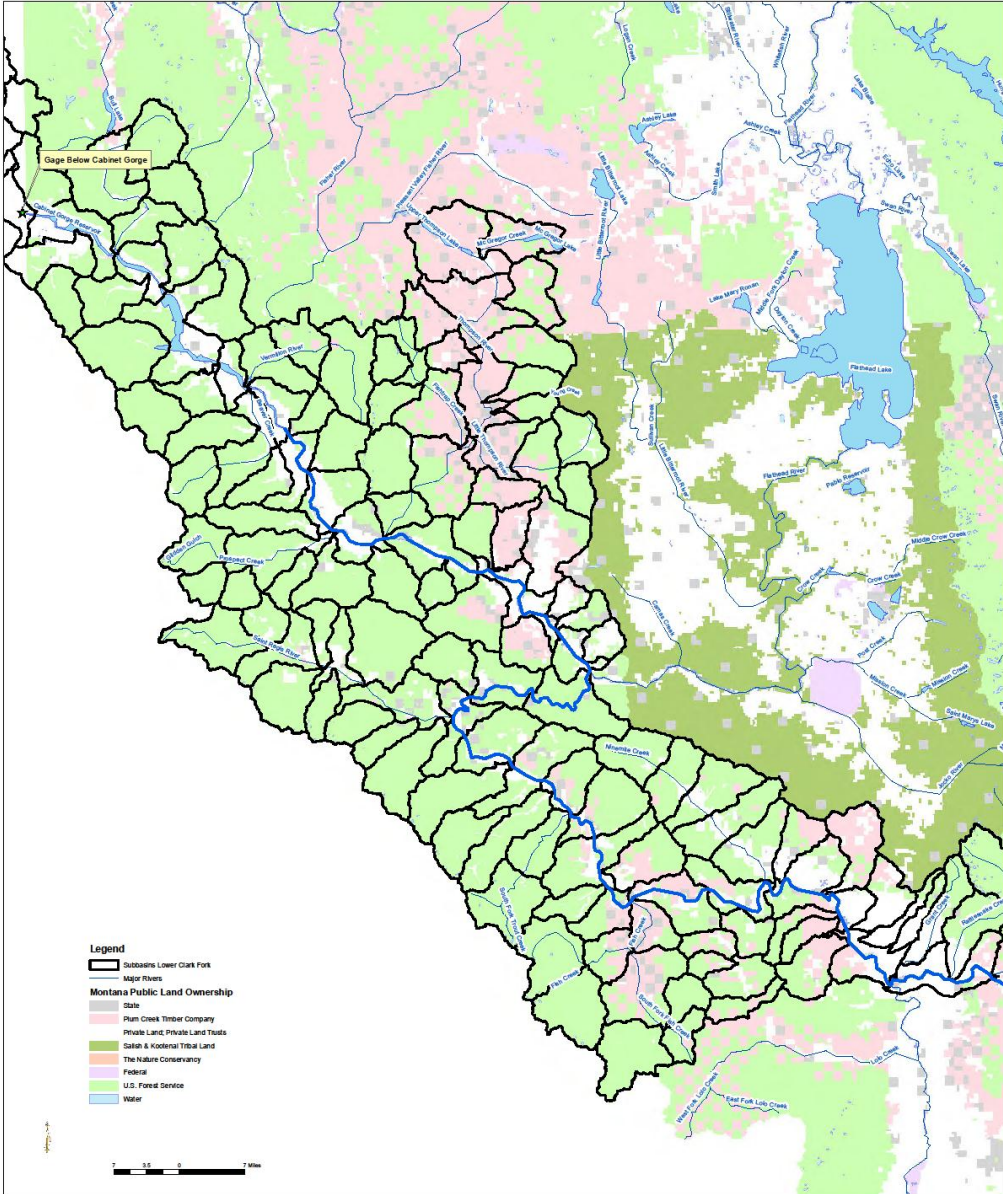


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Blackfoot River near Bonner; gage at lower end of downstream Murphy Right reach. FWP Right is Murphy right for reach; 1992 is 10th % driest year in period, 1985 is 20th % year in period, 2008 is 50th % (median) year in period. Period 1940 – 2011.

Lower Clark Fork River Basin 2

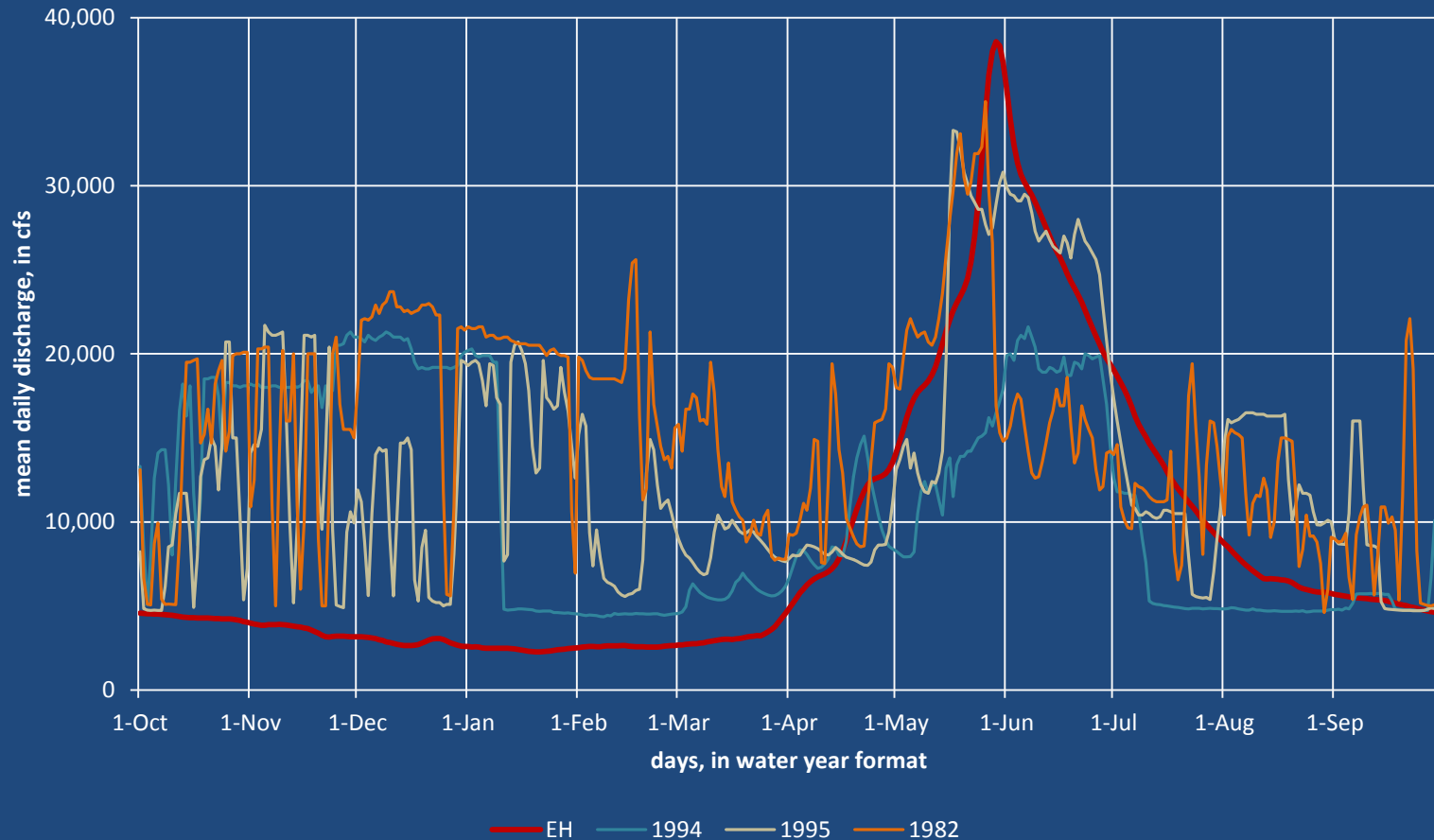


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CSKT Response to State of Montana Proposal

1. Instream Flow Water Right (Enforceable Hydrograph) on the Swan River and the Kootenai River
 - Non consumptive water right
 - Water right based on a natural, dry year hydrograph with a fishery purpose
 - Water right held by the CSKT with a time immemorial priority date
- Swan River – Call would be restricted to Junior Surface Water Irrigation Uses and Junior Ground water Irrigation Uses > 100 gpm
- Kootenai River – Call would be restricted - exercise of the right would be suspended as long as operations at Libby Dam comply with the current (or successor) Biological Constraints for the system

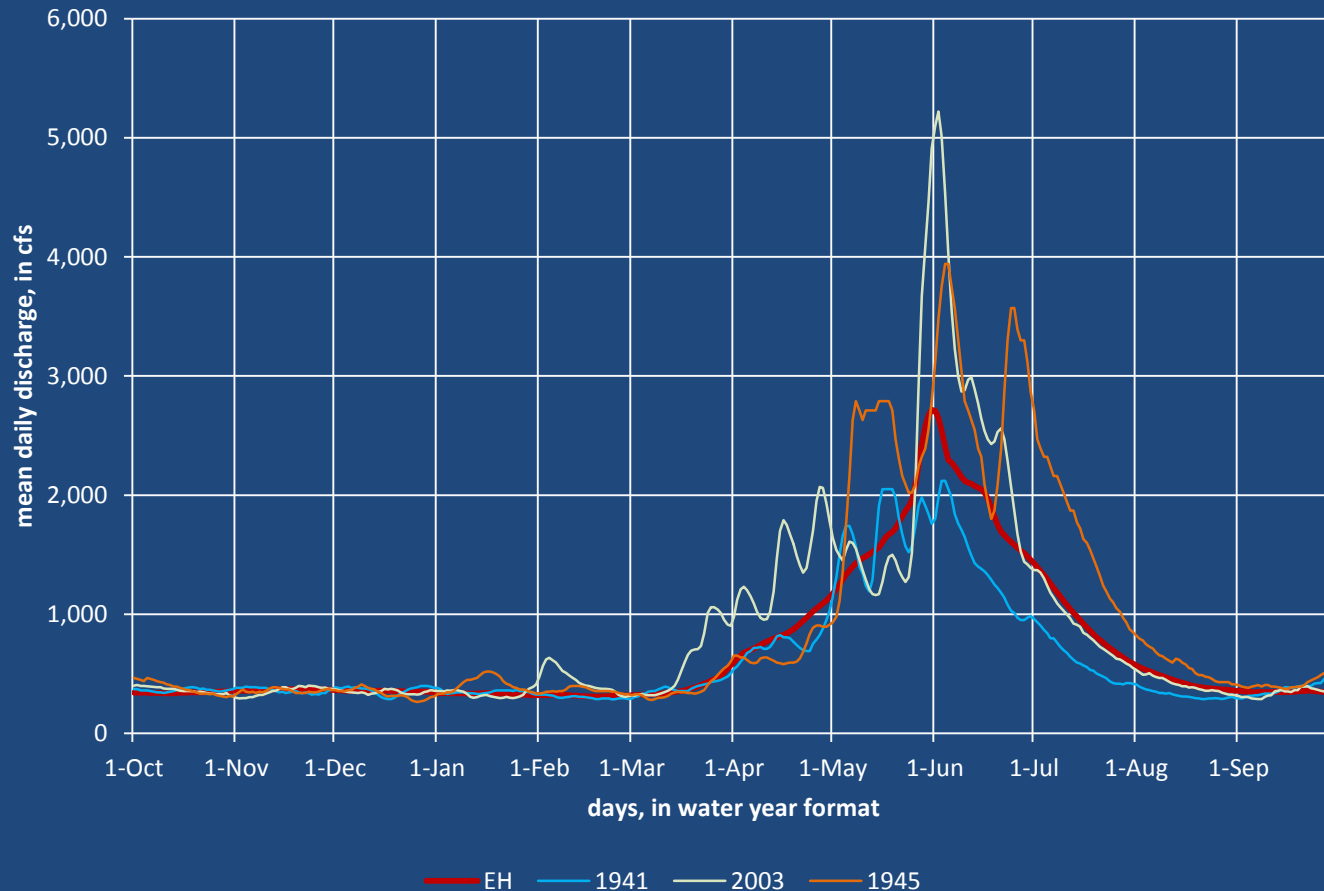
CSKT Response to State of Montana Proposal *continued*



Kootenai River at Leonia

EH is State proposed enforceable hydrograph. 1994 – 20th percentile year in period; 1995 - median year in period; 1982 - 80th percentile year in period. Period 1972 – 2011, post-Libby Dam.

CSKT Response to State of Montana Proposal *continued*



Swan River at Bigfork

EH is State proposed enforceable hydrograph. 1941 – driest year in period; 2003 – 10th percentile year in period; 1945 - 20th percentile year in period; Period 1923 – 2011.

CSKT Response to State of Montana Proposal *continued*

2. Co – Ownership of Water Rights with the Montana Fish, Wildlife and Parks

- Recreation or Murphy [Instream] rights on the mainstem of the Bitterroot River, the Blackfoot River, the Flathead River and mainstem forks, Rock Creek in the Clark Fork, and filed use rights the Tobacco River and Young Creek in the Kootenai Drainage
- Recreation Water Rights on lakes in the Clearwater and Blackfoot Drainages and upper Little Bitterroot Basin

CSKT Considerations to Address

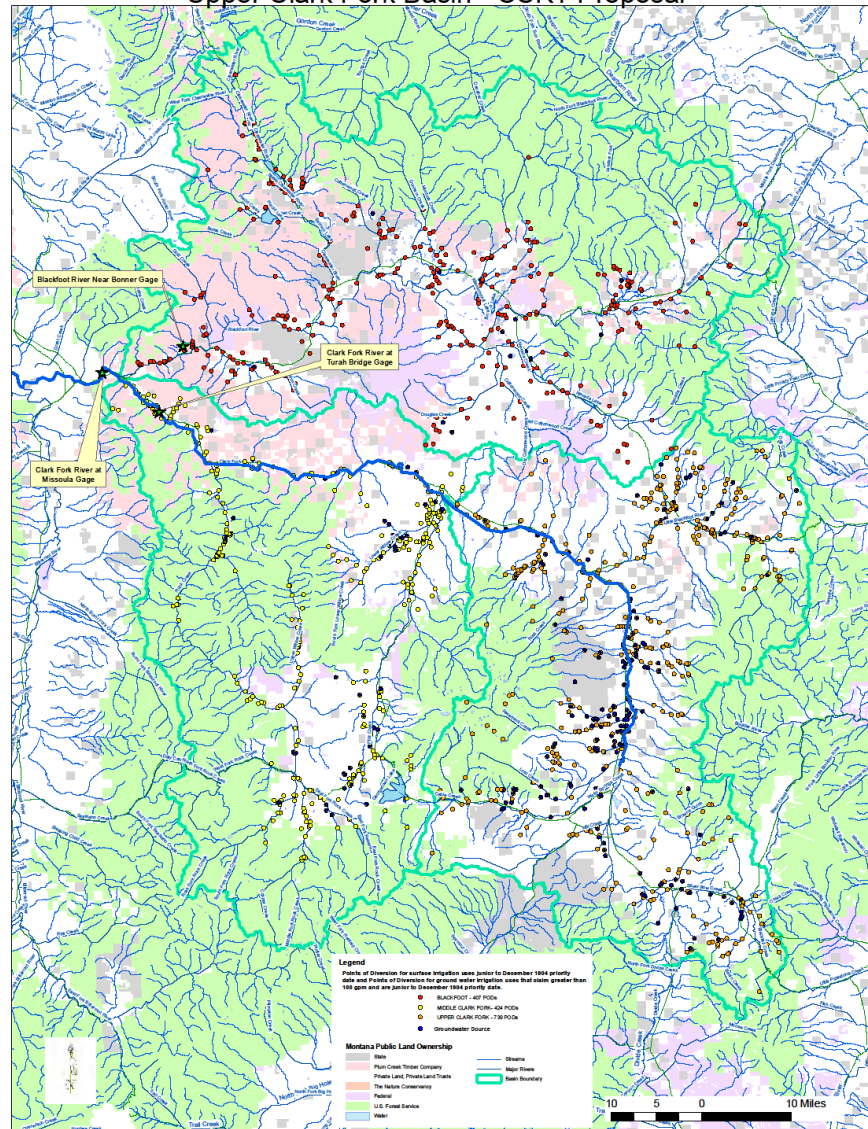
- Tribes retain the right, but not the obligation, to defend and monitor this category of rights
- Tribes disclaim liability as it relates to contract storage rights in Bitterroot Basin

CSKT Response to State of Montana Proposal *continued*

3. Co-ownership of the Milltown Dam water right

- State has proposed co-ownership with MFWP of the right
- Non-consumptive right
- Underlying water right is for 2,000 cfs with 1904 priority date
- The enforceable water right would be a staged hydrograph with a maximum value of 2,000 cfs and a minimum value of 1,100 cfs.
- The water right would be enforceable at the Clark Fork above Missoula gage (incorporates both Clark Fork and Blackfoot Rivers)
- Call restricted to junior surface water irrigation uses and junior irrigation groundwater uses with a flow rate > 100 gpm

Upper Clark Fork Basin - CSKT Proposal



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CSKT Response to State of Montana Proposal *continued*

CSKT Considerations to Address

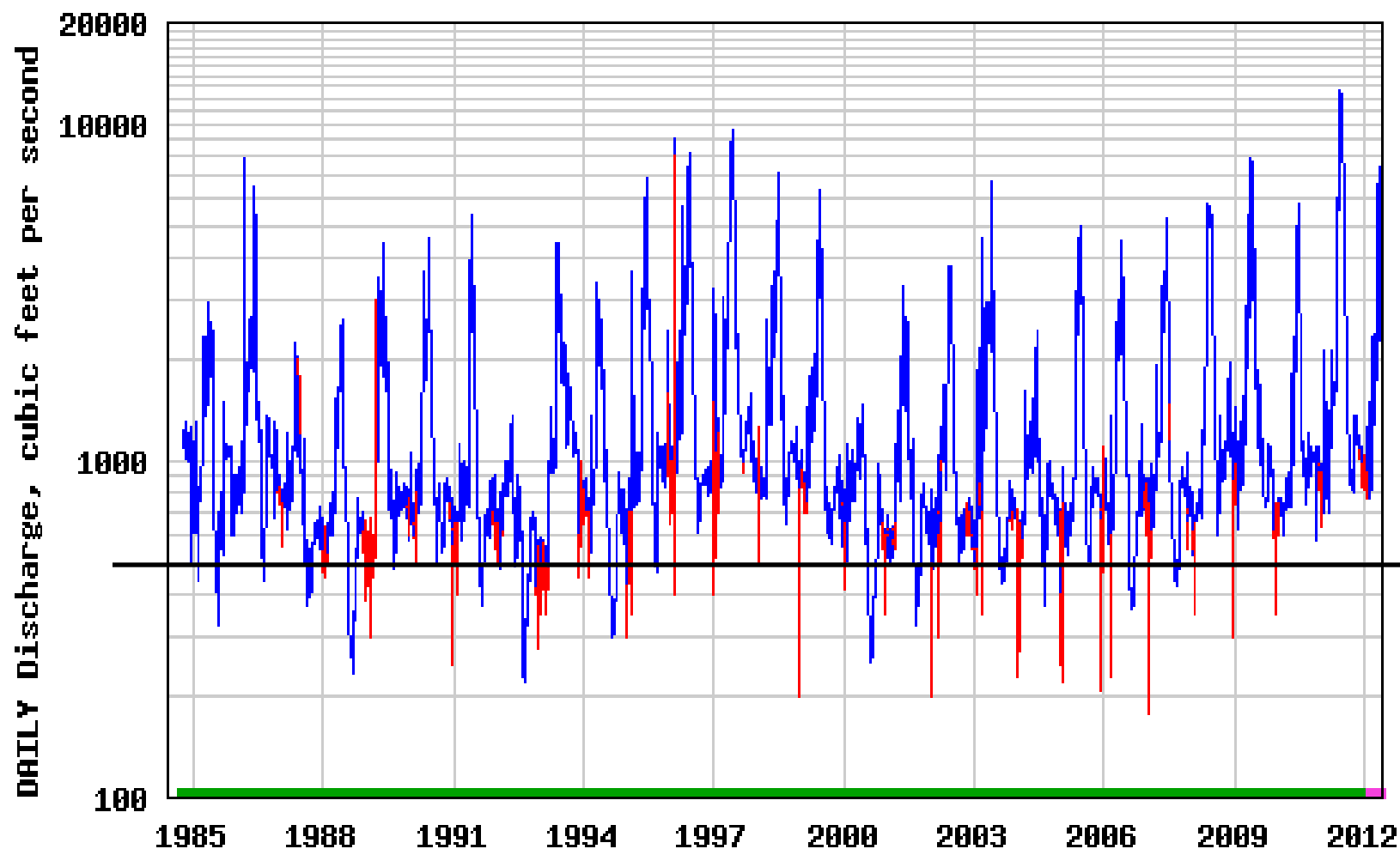
1. Set enforceable target flows for the Blackfoot River (measured at the Bonner gage) and the Clark Fork River above the confluence with the Blackfoot (measured at the Turah gage), while maintaining the enforceable point at the gage above Missoula
2. Modify the minimum enforceable flows as follows -
 - Set the minimum flows in the Blackfoot to 700 cfs (same as Murphy right, but older priority date)
 - Set the minimum flow in the Clark Fork above the confluence to 500 cfs
 - Set the minimum flow above Missoula to 1,200 for all days in a year where it falls below this value
3. Apply an adaptive process to phase in enforceable target flows
 - In Blackfoot Basin – allow current Blackfoot Challenge to integrate enforceable target into their Drought Response Planning Process

CSKT Response to State of Montana Proposal *continued*

CSKT Considerations to Address *continued*

- In Clark Fork above confluence develop an adaptive management process to develop a basin-wide drought management plan to meet proposed enforceable target flow
- 4. Preserve the ability to call junior users at all three measurement / enforcement locations

USGS 12334550 Clark Fork at Turah Bridge nr Bonner MT



— Daily mean discharge

— Estimated daily mean discharge

— Period of approved data

— Period of provisional data

New Elements to CSKT Response to State of Montana Proposal

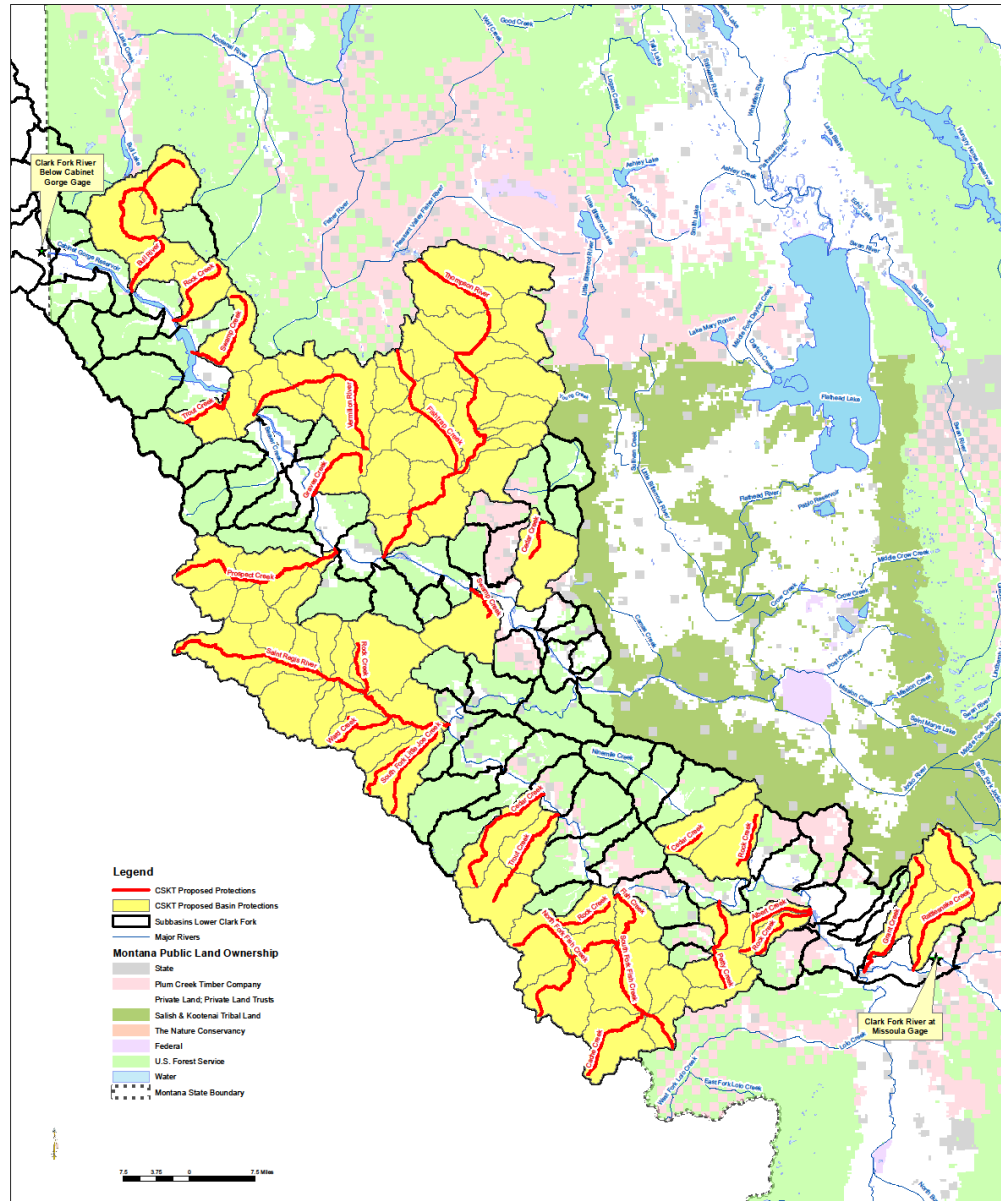
1. Basin Restrictions

- Propose additions in the Kootenai Basin – Yaak River, Fisher River, Lake Creek
- Propose new basins to include in the Lower Clark Fork Basin

C A N A D A



Lower Clark Fork River Basin with CSKT Proposed Protections



New Elements to CSKT Response to State of Montana Proposal *continued*

2. Enforceable Hydrograph on the mainstem of the lower Clark Fork River measured at the Clark Fork River below Cabinet Gorge Dam
 - Non consumptive water right
 - Water right set to 5,000 cfs for each day of the year
 - Water right with a fishery purpose
 - Water right held by the CSKT with a time immemorial priority date

New Elements to CSKT Response to State of Montana Proposal *continued*

3. Habitat Enhancement Fund

- Tool to address Tribal concerns in highly appropriated and over appropriated basins – such as the Bitterroot Valley

4. Protective level for entirety of Flathead Lake

5. Placid Creek Instream Flow